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SENSITIVE

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DEPT FOR WHA/CEN RBEAL, EEB/IFD/OIA FOR HGOETHERT, L/CID FOR
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SUBJECT: COSTA RICA -- 2008 REPORT ON INVESTMENT DISPUTES AND
EXPROPRIATION CASES

REF: (A) SECSTATE 43784, (B) 06 SAN JOSE 1254

¶11. (U) SUMMARY. The Embassy is aware of three outstanding cases brought by American business entities and citizens against the Government of Costa Rica (GOCR). Two of these cases (claimants C and E below) are longstanding. Although claimant C is not satisfied with the outcome thus far, due process does not seem to have been denied in that case. For claimant E, the case is still working its way through the legal system. Claimant D is a new case involving at least six AmCit landowners. (Our claimant designation is the same as used in the 2006 report, Ref B). END SUMMARY.

EXPROPRIATIONS

CLAIMANT C

¶12. (U) In 1983 the GOCR expropriated extensive ranchland owned by Claimant C, an Amcit. The GOCR held the land for nine years, after which it lifted the expropriation order and returned the property. Claimant sued the GOCR to obtain compensation for income lost during the nine- years the GOCR held claim. The court ordered an appraisal, which determined that the claimant suffered a loss of USD 11 million due to the expropriation. The GOCR balked at the amount and refused to proceed with the claim. Over the course of 10 years, the claimant, with support from the Embassy, attempted to reach a negotiated settlement with the GOCR, while also pursuing the matter in Costa Rican courts.

¶13. (U) Legal recourse in the Costa Rican justice system has now been exhausted with a recent decision from the highest civil court in Costa Rica (Sala I or "Sala Primera") which awarded nothing to the claimant. The claimant informed us in May 2008 that the case has been submitted before the InterAmerican Human Rights Commission. COMMENT: To date, although the Claimant continues to be unsatisfied with the results delivered by the Costa Rican judicial system, it appears that the Costa Rican court system has not denied Claimant C due process. END COMMENT.

CLAIMANT D

¶14. (U) A number of US citizens are currently facing expropriation of lots in "Las Baulas" National Park. The land under expropriation is a 75-meter strip from a point 50 meters above the high-tide mark to a point 125 meters above the high-tide mark and extending along approximately six kilometers of Playa Grande and the smaller beaches of Playa Ventanas and Playa de Jesus in Guanacaste Province. Valuation of the land has become contentious, since "Las Baulas" National Park is contiguous to the booming beach town of Tamarindo and the lots subject to expropriation are among the very few in Costa Rica with beachfront title.

¶15. (U) A straight reading of the law that created "Las Baulas" National Park in 1995 is that it is a purely marine park extending

125 meters seaward of the high-tide mark. Nevertheless, the Procurator General (Prosecutor General) in 2004 interpreted the 1995 law to mean that it applies to the area 125 meters above the high-tide mark. The first 50 meters of all Costa Rican beaches are public dominion, so this interpretation applied to the next 75 meters of privately owned land. The Constitutional Chamber of the Supreme Court agreed to hear the case in 2005, and in May 2008 decided that the Procurator General's ruling was valid. This means that the local municipality of Santa Cruz's previous approvals of development in the zone are invalid.

¶6. (U) The beaches within "Las Baulas" National Park are among the most important nesting beaches in the Pacific basin for the endangered Leatherback Turtle (or "Baula" in Spanish). The strip of land subject to expropriation is behind the area of the beach where the turtles nest and is meant to provide a small buffer between any development and the nest sites. The landowners contend that a strict zoning ordinance would protect the area just as well without depriving landowners of their properties. In an April meeting with Embassy staff, Minister of Environment and Energy Roberto Dobles clarified that landowners under the expropriation order include both foreigners and Costa Ricans and stated that 18 expropriations had already been declared, rejected by the plaintiffs, and put before the courts. An additional 32 expropriations had been declared as "public interest" but hadn't proceeded to the courts. More cases were under preparation.

¶7. (U) The Embassy has received a signed petition from five US citizens who are currently appealing their expropriation orders. A sixth US citizen, the longtime owner of a hotel on the beach and also subject to expropriation, has separately contacted the Embassy. We are told that additional US citizens have been, or will be, affected by the expropriations. One of the petitioners states that neighbors "within 300 meters of each other" have received wildly disparate court appraisals of \$13 per square meter (/m²), \$200/m², \$500/m², \$800/m² and \$850/m². We have also been told that such titled beachfront Costa Rican land is "priceless" or in any case worth more than \$1,200/m². As a reference, six kilometers of beach with 75 meters of expropriated land at \$800/m² would carry a value of \$360 million dollars. It is not clear if the GOCR has the reserves or budget for such a purchase, which is a major reason that a strict zoning ordinance applied to development behind the beach has been mentioned repeatedly as an alternative if not a complement to the expropriations.

¶8. (U) Expropriations in "Las Baulas" National Park have progressed in a way reasonably consistent with the rule of law, although there have been enough irregularities to provide ammunition to all parties involved. The process will likely continue for years. The Embassy will continue to actively monitor the case.

BUSINESS DISPUTES

CLAIMANT E

¶9. (U) An American oil company was granted a concession for offshore exploration in 1998. When the previous administration of President Abel Pacheco entered office in 2002, it announced that it would not allow offshore oil exploration. The claimant pursued legal recourse for damages suffered when his concession contract was cancelled. In different decisions over the last several years, Costa Rican courts have ruled in favor of both the claimant and the GOCR. Following a court decision in favor of the claimant for damages, the GOCR responded in January 2005 by declaring the claimant in breach of contract for non-performance. In April 2005, the claimant responded to the breach of contract charge by counter-suing the GOCR. The claimant countered that non-performance was caused by the original GOCR finding that environmental impact studies were inadequate, which delayed work. For the past year, the claimant has been in discussions to sell the concession to another firm, and recently informed the Embassy that this could happen "over the summer" (June-August). The claimant continues to simultaneously seek compensation in Costa Rican courts, which he will abandon once the sale of the concession is finalized.

¶10. (U) Minister Dobles stated in a recent meeting with US Embassy

representatives that the GOCR is looking to renew gas and petroleum exploration in Cost Rica and that the GOCR is currently waiting for a ruling from the Procurator General's office determining whether the claimant's lease is legally finished ("juridicamente terminado") or not. When asked if there is any room for arbitration with the claimant's case, he stated "that train already left the station" ("esta etapa ya paso"). That is, if the Procuraduria decides that the claimant's concession is legally finished, then the claimant's only recourse by the GOCR's reckoning is in the Costa Rican courts of law. Embassy representatives were given the impression that there is a good chance that the Procuraduria will decide that the claimant's concession is not legally finished and can therefore be revived. However, Minister Dobles gave the clear impression that the GOCR would not look favorably upon revival of the lease while the plaintiff is still sueing for damages.

IDENTIFICATION OF CLAIMANTS

¶11. (SBU) The three cases are identified as follow:

-- Claimant C: Rancho Gessling, S.A.
-- Claimants D: Brett Berkowitz, Glenn Gremillion, John Gill, Greg Rogers and Wayne Cates (petitioners). Louis Wilson,(hotel owner).
-- Claimant E: Harken Energy Corporation/MKJ

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